

Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CITY OF SEATTLE, a municipal corporation
located in the County of King, State of
Washington,

Plaintiff,

V.

MONSANTO COMPANY, SOUTHERN POLYMER CORPORATION,
and PHARMACIA CORPORATION, and
DOES 1 through 100.

Defendants.

Case No.: 2:16-cv-00107-RSL

**DECLARATION OF JASON JULIUS IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PROTECTIVE ORDER**

**NOTE ON MOTION CALENDAR: January
17, 2020**

Complaint Filed: January 25, 2016
Trial Date: September 14, 2020

Jason J. Julius, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am an associate with Baron & Budd, P.C., counsel for Plaintiff City of Seattle (“the City”). I submit this declaration in support of Plaintiff’s Motion for a Protective Order as to the City’s privileged mediation documents and communications. I have personal knowledge of the facts set forth in this declaration.

2. On December 26, 2019, I participated in a phone call with counsel for Defendants Monsanto Company, Solutia Inc., and Pharmacia LLC (“Defendants”) regarding the documents sought by Defendants in Request for Production No. 39. The City informed Defendants that it was unwilling to produce the requested documents because they were protected by the mediation privilege due to the preparation of the documents explicitly for the Lower Duwamish Allocation proceedings. A further meet and confer call was scheduled for January 3, 2020.

**DECLARATION OF JASON J. JULIUS
(2:16-cv-00107-RSL) - 1**

PETER S. HOLMES
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
(206) 684-8200

1 3. On January 3, 2020, a second meet and confer call occurred between the City and
2 Defendants, at which time it was confirmed that the City would not be producing mediation privileged
3 documents pursuant to RFP 39, but would produce any and all documents which were utilized in the
4 Allocation proceeding but which existed and/or were created outside of the context of the Allocation.
5 The City also expressed concern that Defendants were utilizing mediation privileged documents from
6 the Allocation which were provided by Pharmacia LLC, a party to both the Allocation and this lawsuit.
7 The City stated that such documents should not be used and asked Defendants to confirm whether they
8 had been provided any such documents and whether they were being utilized.

9 4. On January 3, 2020, I sent an email to Defendants counsel summarizing the City's
10 position regarding its refusal to produce mediation privileged documents pursuant to RFP 39, and its
11 objection to the use of any mediation privileged documents received from Pharmacia LLC in this
12 lawsuit. The email requested that Defendants confirm whether or not mediation privileged materials
13 had been provided and/or were being used by Defendants. A response was requested by the afternoon
14 of January 6, 2020. A true and correct copy of my January 3 email is attached hereto as Exhibit 1.

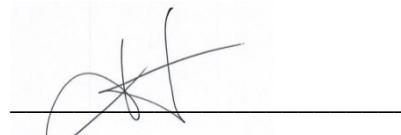
15 5. On January 6, 2020, Defendants' counsel emailed me to inform me that e response to
16 the January 3, 2020 email would be forthcoming by January 8, 2020. On January 7, 2020, I responded
17 by requesting that any such response be provided by noon that day. A true and correct copy of the
18 January 6 and 7 emails is attached hereto as Exhibit 2.

19 6. As of the time of this filing the City has received no response to the inquiries made in
20 the January 3, 2020 email.

21 I declare under penalty of perjury of that the foregoing is true and accurate to the best of my
22 knowledge.

23 Executed this 9th day of January, 2020, at San Diego, California.

24
25
26
27
28



Jason J. Julius

Exhibit

1

Jason Julius

From: Jason Julius
Sent: Friday, January 03, 2020 11:26 AM
To: Lisa N. DeBord; Campbell, Jennifer L.; Alex Kennedy-Breit
Cc: Jennifer Hutchison; Kelley Peters; Wishik, Laura
Subject: Meet and Confer Summary - Seattle v. Monsanto

Jen, Alex, and Lisa,

To summarize our meet and confer discussions over the last couple of weeks, my understanding is as follows:

1. With respect to RFP 39 regarding the requested production of allocation related documents, the City stands by its objection based on mediation privilege and confidentiality. Defendants have communicated that they believe the City waived this privilege. The City disagrees and does not intend to produce any documents prepared explicitly for the allocation proceeding. However, the City has already, and will continue to produce as necessary, documents that exist outside of the Allocation, including, but not limited to, the City's responses to EPA's requests for information under CERCLA Section 104(e), sampling data from the City's stormwater system and from City facilities, information on City facilities and operations, deposition transcripts from prior litigation, affidavits and declarations by City witnesses in prior litigation, and environmental reports on contaminated sites in the Duwamish drainage area.
2. The City is concerned that Defendants have been provided mediation protected materials from the allocation by Pharmacia, and that those materials are being used by Defendants in this litigation. To the extent that such materials are being used in this litigation, the City objects and may seek direction/clarification from the Court as necessary. If you contend that no privileged materials have been provided or are being used by Defendants in this litigation, please advise immediately.

If I have missed anything or if you disagree with the foregoing, please let me know by 2 pm on Monday, January 6.
Thanks

Jason J. Julius, Esq.
Ecolawyers | Baron & Budd, P.C.

214.521.3605 main
858.251.7427 direct
858.951.6215 mobile

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www.baronandbudd.com

Dallas | Austin | Los Angeles | Baton Rouge | New Orleans | San Diego

Exhibit

2

Jason Julius

From: Jason Julius
Sent: Tuesday, January 07, 2020 9:19 AM
To: Lisa N. DeBord
Subject: RE: Meet and Confer Summary - Seattle v. Monsanto

Thanks Lisa, please provide a response by noon pacific.

Jason

From: Lisa N. DeBord <debord@capessokol.com>
Sent: Monday, January 06, 2020 5:41 AM
To: Jason Julius <jjulius@baronbudd.com>; Campbell, Jennifer L. <JCampbell@SCHWABE.com>; Alex Kennedy-Breit <akennedy-breit@kslaw.com>
Cc: Jennifer Hutchison <jhutchison@baronbudd.com>; Kelley Peters <kepeters@baronbudd.com>; Wishik, Laura <Laura.Wishik@seattle.gov>
Subject: RE: Meet and Confer Summary - Seattle v. Monsanto

Jason,

I am out of the office and will respond by Wednesday.

Thank you,
Lisa

Lisa N. DeBord
Attorney
Capes Sokol

Pierre Laclede Center
7701 Forsyth Boulevard, Twelfth Floor
St. Louis, Missouri 63105-1818
P: 314.754.4864
M: 314.708.1614
F: 314.754.4865
capessokol.com

As of January 10, 2020,
Capes Sokol's new address will be:
8182 Maryland Avenue, 15th Floor
St. Louis, Missouri 63105

C A P E S S O K O L

email transmission are private and confidential. The information contained in the material is privileged and is intended only for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be advised that unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this emailed information is strictly prohibited. If you have received this email transmission in error, please immediately notify us either by telephone or by email to arrange for return of the emailed information to us.

From: Jason Julius <jjulius@baronbudd.com>

Sent: Friday, January 3, 2020 1:26 PM

To: Lisa N. DeBord <debord@capessokol.com>; Campbell, Jennifer L. <JCampbell@SCHWABE.com>; Alex Kennedy-Breit <akennedy-breit@kslaw.com>

Cc: Jennifer Hutchison <jhutchison@baronbudd.com>; Kelley Peters <kepeters@baronbudd.com>; Wishik, Laura <Laura.Wishik@seattle.gov>

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Thanks

Jason J. Julius, Esq.
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Effective January 10th, Capes Sokol's new office address will be - 8182 Maryland Avenue, Fifteenth Floor, St. Louis (Clayton), Missouri, 63105.